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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN JACOB OLIVAS,

Defendant.

No. ED CR 18-231-JGB

GOVERNMENT'S (1) OPPOSITION TO
DEFENDANT JOHN JACOB
OLIVAS' EX PARTE APPLICATION TO
FILE IN CAMERA AND (2) REQUEST TO
CONTINUE TRIAL DATE AND FINDINGS
REGARDING EXCLUDABLE TIME PERIODS
PURSUANT TO SPEEDY TRIAL ACT

**CURRENT TRIAL DATE: 05-28-2019 at
9:00 a.m.**

**[PROPOSED] TRIAL DATE: 06-25-2019
at 9:00 a.m.**

Plaintiff United States of America, by and through its counsel
of record, the United States Attorney for the Central District of
California and Assistant United States Attorneys Julius J. Nam and
Eli A. Alcaraz, hereby files its (1) opposition to defendant JOHN
JACOB OLIVAS' Ex Parte Application to file in camera, filed on April
10, 2019 (Dkt. 24); and (2) request to continue trial date and

1 findings regarding excludable time periods pursuant to the Speedy
2 Trial Act.

3 This opposition is based upon the attached memorandum of points
4 and authorities, the files and records in this case, and such further
5 evidence and argument as the Court may permit.

6 Dated: April 11, 2019

Respectfully submitted,

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13 /s/
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UNITED STATES OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On April 10, 2019, defendant JOHN JACOB OLIVAS ("defendant")
4 filed an Ex Parte Application to file an application in camera.
5 Based on communications with defense counsel, the government
6 understands the proposed in camera document to seek a continuance of
7 the trial to December 3, 2019. While the government does not oppose
8 defendant's use of the ex parte process to seek a continuance, it
9 objects to filing such a request in camera and further objects to the
10 length of the continuance. For the reasons set forth below, if the
11 Court is inclined to grant a continuance, a reasonable continuance
12 would be from May 28, 2019 to June 25, 2019 at 9:00 a.m. The
13 government requests that the Court deny defendant's request for an in
14 camera filing and, if it is inclined to grant a continuance, place
15 the reasonable limitation of a single-month continuance.

16 **II. AN IN CAMERA FILING IS INAPPROPRIATE**

17 The government objects to defendant's apparent request to
18 continue the trial via an in camera filing. First, an in camera
19 filing prevents the victims in this case from exercising their rights
20 guaranteed by the Crime Victim Rights Act. An in camera filing
21 prevents the government from effectively communicating with each
22 victim to allow the victim to vindicate her rights, including "[t]he
23 right to reasonable, accurate, and timely notice of any public court
24 proceeding," "[t]he right not to be excluded from any such public
25 court proceeding," and "[t]he right to proceedings free from
26 unreasonable delay." 18 U.S.C. §§ 3771(a)(2), (3), (7). The
27 government has been in contact with victims in this case and knows
28 that at least one victim has strong objections to any continuance.

1 An in camera filing that seeks to continue the trial date to a date
2 unknown to the victims and for reasons unknown to the victims
3 significantly impairs the victims' ability to participate in the
4 proceedings. Second, proceeding in camera prevents the government
5 from knowing essential information such as the requested date and why
6 a continuance is necessary and, accordingly, hinders the government's
7 ability to respond and oppose defendant's request. In all fairness,
8 the government should be given a meaningful opportunity to be heard.

9 **III. A LENGTHY CONTINUANCE TO DECEMBER 3, 2019 IS UNREASONABLE**

10 Based on phone calls and emails between the government and
11 defense counsel, and an email from defense counsel to the Court's
12 courtroom deputy on April 9, 2019, the government understands
13 defendant to be seeking an ex parte continuance of the trial to
14 December 3, 2019. A six-month continuance is unreasonable.

15 First, this case was indicted on August 1, 2018 (Dkt. 1). The
16 government has made two productions of discovery to the defense, the
17 first on August 28, 2018, and the second on November 26, 2018. The
18 first production contained bates range 1 - 29688 and the second
19 contained bates range 29,689 - 30081. While the bates ranges appear
20 significant, there is extensive duplication in the productions due to
21 multiple forensic copies of the same cell phone. The defense has had
22 over 98 per cent of the current discovery in this matter for over
23 seven months and the remainder for over four months. The defense has
24 had the discovery with sufficient time to review and digest it.¹

25
26 ¹ As the Court knows, on April 9, 2019, the government filed an
27 Ex Parte Application for a Protective Order (Dkt. 23). After the
28 Court rules on the Application, the government intends to produce an
additional 1,312 pages of discovery with bates range 30082 - 31393,
but this production does not justify such a lengthy continuance as it

1 Indeed, on September 21, 2018, the Court continued the trial for over
2 seven months, from October 9, 2018 to May 28, 2019. (Dkt. 16.) A
3 second continuance of over six months is unreasonable.

4 Second, the government has been in communication with victims of
5 the defendant and at least one of them has a strong objection to any
6 continuance at all. That victim wants the current trial date to
7 stay, but if not, she would find a continuance to late-2019
8 intolerable. Accordingly, while the government believes that the
9 trial date should remain, it told defense counsel it would be willing
10 to agree to a continuance of approximately one month to June 25,
11 2019. Defense counsel rejected that proposal, but the government is
12 still willing to stipulate to continue the trial to that reasonable
13 date.

14 **IV. CONCLUSION**

15 The United States objects to defendant seeking to continue the
16 trial by filing an Ex Parte Application in camera. It further
17 requests that if the Court is inclined to continue the trial, that it
18 set a reasonable limit and continue the trial to no later than June
19 25, 2019. If the Court grants a one-month continuance, the
20 government further requests that the following dates also be
21 continued -- the pretrial conference date to June 10, 2019 at 2:00
22 p.m., the pretrial motions deadline to May 13, 2019, the deadline to
23 oppose any pretrial motions to May 28, 2019, the deadline to file a
24 reply in support of any pretrial motion to June 3, 2019, and the
25 deadline to file joint jury instructions to June 5, 2019.

26 _____
27 is just over a 4 per cent increase as measured against the discovery
28 already in defendant's possession and, more importantly, the vast
majority of it is the defendant's own personnel file from when he
was a Special Agent with Department of Homeland Security, Homeland
Security Investigation.